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MICHAEL RODAK,

In the Supreme Court of the United States

October Term, 1972

No. 72-1241

HARRY R. ILLMAN,
Petitioner,

vs.

THE TOLEDO BAR ASSOCIATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION

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Respondent The Toledo Bar Association opposes the petition filed herein for a writ of certiorari and prays that such petition be denied.

QUESTIONS PRESENTED

The questions presented for review, as stated by petitioner, are not accurately "expressed in the terms and circumstances of the case" (see paragraph 1(c) of Rule 23). Respondent will note the significant inaccuracies and ommissions in its statement of the case *infra*.

STATEMENT OF THE CASE

It should be noted at the outset that petitioner has failed to comply with paragraph 1 (f) of Rule 23 of this Court, which provides in part as follows:

> "If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari. * * *"

Nowhere in his petition does petitioner specify when or how any federal question was raised in the proceedings before the hearing panel or the Supreme Court of Ohio. Our review of the record reveals that in petitioner's memorandum in support of his motion for re-hearing before the Supreme Court of Ohio appears the first intimation (by language quoted from cases) that he was considering the issue of due process of law. None of the grounds recited in his motion for re-hearing specified any federal question.

Contrary to the inferences apparently intended by petitioner to be drawn from one or two of the questions he poses for review by this Court, petitioner himself made pertinent to these proceedings for reinstatement the earlier disciplinary proceedings of 1952 by stating in his petition for reinstatement (the initiatory pleading in this proceeding) that in October, 1952 he was suspended for five years from the practice of law by the Common Pleas Court of Lucas County, Ohio (Petitioner's Appendix A, p. 25).

Reference is also made by petitioner to a stipulation regarding certain evidence. This stipulation was entered into in order to afford petitioner an opportunity to present additional evidence in rebuttal after the hearing before the hearing panel had been concluded. If petitioner were to examine the written stipulation carefully, he would notice that respondent had stipulated that, if petitioner "were permitted to testify further on the matter of his professional relationship with Rita Ruth Fortune" his testimony would be as set forth in the stipulation. Such a stipulation does not establish as true the purport or import of the evidence offered by petitioner; rather, it merely acknowledges that he would have testified to a certain effect. The hearing panel had such proffered testimony before it to weigh along with all the other evidence contained in the record.

The petitioner was represented by able counsel from the time he initiated these proceedings by filing his petition for reinstatement until after the Supreme Court of Ohio had entered its judgment denying such petition.

REASONS FOR NOT GRANTING THE WRIT

The petition for a writ of certiorari should not be granted for each of the following reasons:

1. The petitioner failed to raise a federal question at his first opportunity in this proceeding. If raised at all, the first time any federal question was intimated was in connection with the motion for re-hearing before the Supreme Court of Ohio filed after that Court entered its judgment denying the petition for reinstatement to the practice of law.

2. Due process of law was accorded to petitioner. By rule of the Supreme Court of Ohio (see Petitioner's Appendix D, pp. 37-38), petitioner had a hearing where he was permitted to offer all the evidence he desired on the issue of his rehabilitation; he was aware that respondent opposed his petition for reinstatement, and had and availed himself of full opportunity to cross-examine respondent's witnesses and to rebut their testimony; the issues were argued before the hearing panel by written briefs of petitioner and respondent; the full Board of Commissioners on Grievances and Discipline considered the matter and certified its report to the Supreme Court of Ohio, which, after considering the objections and brief of petitioner and the brief of respondent, confirmed the report of the board and denied the petition for reinstatement (see Petitioner's Appendix B, p. 35).

As this Court observed in *Dohany v. Rogers*, 281 U.S. 362 (1930), at 369:

> "The due process clause does not guarantee to the citizens of a state any particular form or method of state procedure. Under it he may neither claim a

right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it. *Reetz v. Michigan*, 188 U.S. 505, 508; *Hurwitt v. North*, 271 U.S. 40; *Bauman v. Ross*, 167 U.S. 548, 593; *Backus v. Union Depot Co.*, *supra*, p. 569."

3. This Court should not be required to weigh the evidence in order to determine whether it would have come to the same conclusion as was reached below. The Board of Commissioners was inquiring into the moral rehabilitation of petitioner, and it is quite apparent from the Board's report (Petitioner's Appendix A, pp. 33-34) that the hearing panel took into account, not only the content of his testimony, but also his demeanor and appearance as a witness, elements which certainly bear upon the determination of straightforwardness and trustworthiness.

The limits of a review of decisions of state courts in disciplinary proceedings were defined by this Court in *Selling v. Radford*, 243 U.S. 46 (1917), at 50-51, as follows:

"* * * That is to say, we are of opinion that we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure from want of notice or opportunity to be heard was wanting in due process; 2. That there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we

could not consistently with our duty accept as final the conclusion on that subject; or 3. That some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

Although the *Selling* case deals with disbarment proceedings rather than reinstatement proceedings, the same principles should apply to both. None of the three conditions specified in the foregoing quotation from the *Selling* case exists in the case at bar.

CONCLUSION

It is earnestly maintained that petitioner has failed to show any grounds for the granting of a writ of certiorari and that his application therefor should be denied.

Respectfully submitted,

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